

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
 )  
The Wireless Telecommunications Bureau and )  
the Office of Engineering and Technology Seek )  
Comment on Progeny's M-LMS Field Testing )  
Report )

WT Docket No. 11-49

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To: Chief, Wireless Telecommunications Bureau and  
The Chief, Office of Engineering and Technology

**OPPOSITION OF PROGENY LMS, LLC**

Progeny LMS, LLC ("Progeny"), by its attorneys, hereby opposes the request of Skybridge Spectrum Foundation, Telesaurus Holdings GB LLC and the other affiliated entities held by Warren Havens (hereinafter "Havens") for the Commission to extend the deadline for the filing of comments and reply comments in this proceeding.<sup>1</sup>

Havens' extension request comes as no surprise to Progeny. Havens routinely files extension requests in nearly every proceeding in which he is a party, in each case disregarding the Commission's explicit policy that "extensions of time shall not be routinely granted."<sup>2</sup>

What is surprising is that (1) Havens waited until just three days before the comment deadline to file his request, (2) Havens failed to provide a credible explanation for why additional time may be warranted, and (3) Havens makes absolutely no effort to explain why he has standing or would otherwise be an interested party in this proceeding. For each of these

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<sup>1</sup> See *Request to Extend the Dates for Comments and Replies*, Skybridge Spectrum Foundation and Telesaurus Holdings GB LLC (filed March 12, 2012) ("*Havens Extension Request*"). A copy of this Opposition is being sent to Havens by email today.

<sup>2</sup> 47 C.F.R. § 1.46(a).

reasons, the Commission should promptly reject Havens extension request and admonish Havens, as the Commission has done as recently as today,<sup>3</sup> that Havens should not use the Commission's administrative rules to harass Commission licensees.

**I. THE COMMISSION SHOULD NOT REWARD HAVENS FOR WAITING UNTIL JUST THREE DAYS BEFORE THE DEADLINE TO FILE HIS EXTENSION REQUEST**

The Commission placed Progeny's Part 15 test report on Public Notice on February 14, 2012, providing interested parties 30 days to file comments on the report.<sup>4</sup> Havens, however, had more than 30 days to prepare any comments he might have had. Havens acknowledged in a pleading he filed on February 13, 2012 that he had already seen the report, becoming aware of it as early as February 1, 2012 when he saw a reference to the report in a pleading that was served on him by Progeny.<sup>5</sup>

Despite now being aware of the report for at least five weeks, Havens waited until just three days before the comment deadline to request an extension of time. Havens makes no effort to explain why he could not have filed his extension request at an earlier date.

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<sup>3</sup> See Applications to Provide Automated Maritime Telecommunications System Stations at Various Locations in Texas, and Applications to Provide Automated Maritime Telecommunications System Stations at Chaffee, Aspen, Colorado Springs, Copper Mountain, and Leadville, Colorado, *Memorandum Opinion and Order*, FCC 12-26 (rel. March 12, 2012) ("*Havens Sanctions Order*").

<sup>4</sup> See Public Notice, *The Wireless Telecommunications Bureau and the Office of Engineering and Technology Seek Comment on Progeny's M-LMS Field Testing Report*, DA 12-209 (Feb. 14, 2012).

<sup>5</sup> See *Reply to Opposition to Petition for Partial Reconsideration and Clarification*, Skybridge Spectrum Foundation and Telesaurus Holdings GB LLC, WT Docket No. 11-49, at 3 (Feb. 13, 2012) (stating that Havens became aware of Progeny's Part 15 test report when he saw a reference to it in the February 1, 2012 opposition that Progeny filed against Havens' petition for reconsideration of the Commission's order granting waivers of two rules to Progeny).

This absence of any explanation provides strong evidence that Havens' extension request, and the timing of its filing, is intended only to harass a fellow Commission licensee. The Commission has previously admonished Havens' for filing "abusive and harassing pleadings" with the Commission.<sup>6</sup> It would therefore be appropriate for the Commission to sanction Havens for his inappropriate use of the Commission's administrative process. At the very least, the Commission should not reward Havens by granting any extension, no matter how brief, to the 30 day comment period that was appropriately established for this proceeding.

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## **II. HAVENS FAILS TO IDENTIFY A CREDIBLE JUSTIFICATION FOR AN EXTENSION OF THE COMMENT AND REPLY PERIODS**

In requesting an extension of the comment and reply periods, Havens fails to provide any credible reason why additional time to prepare comments may be justified. Most of Havens' extension request is devoted not to explaining why an extension is needed, but to identifying what Havens believes are shortcomings in the substance of Progeny's test report. Now that Havens has raised his concerns with the Commission, no reason would appear to exist for Havens to file further comments either on the March 15<sup>th</sup> filing deadline, or two weeks thereafter.

Further, Havens' has previously identified what he believes are substantive shortcomings in Progeny's test report. Havens devoted an entire section of a February 13, 2012 pleading that he filed against Progeny to identifying his apparent concerns with the test report.<sup>7</sup> Havens'

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<sup>6</sup> See *Mobex Network Services, LLC, to Renew Licenses for Automated Maritime Telecommunications System (AMTS) Stations in Various Locations in the United States*, Order on Reconsideration, DA 07-148, 22 FCC Rcd 665, 672 (¶ 16) (2007).

<sup>7</sup> See *Reply to Opposition to Petition for Partial Reconsideration and Clarification*, Skybridge Spectrum Foundation and Telesaurus Holdings GB LLC, WT Docket No. 11-49, at 3 (Feb. 13, 2012).

extension request therefore already constitutes Havens' second bite at the apple in this proceeding and Havens now apparently seeks additional time to file a third, and perhaps a fourth, set of opposing comments.

The Commission should not condone such inappropriate tactics. Havens claims in his extension request that additional time is warranted because Progeny did not conduct its tests using "existing deployments or systems of Part 15 devices."<sup>8</sup> Havens argues that, because of this, additional time is needed for Havens to identify "what actual 'existing deployments of systems of Party 15 devices' may exist."<sup>9</sup>

Progeny, however, did conduct its tests using existing deployments and systems of Part 15 devices. As detailed in its test report, Progeny engaged in exhaustive efforts to identify the Part 15 devices and systems that are currently available and deployed in the market. Progeny also employed substantial efforts to gain access to a representative sampling of these devices for the purpose of testing. The fact that Progeny's tests replicated actual usage conditions, rather than intruding on them, is irrelevant. After all, the question of whether a particular model of cordless telephone continues to function in the presence of Progeny's M-LMS signal does not turn on whether a test recording is transmitted on the device, rather than an actual conversation between consumers.

Havens also claims that additional time is needed because Progeny's tests were conducted in a few locations and not nationwide.<sup>10</sup> Havens claims that different deployments of

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<sup>8</sup> See *Havens Extension Request* at 2 (quoting *Request by Progeny LMS, LLC for Waiver of Certain Multilateration Location and Monitoring Service Rules*, Order, DA 11-2036, ¶ 25 (rel. Dec 20, 2011)).

<sup>9</sup> *Id.*

<sup>10</sup> See *id.* at 2-3.

Part 15 devices exist in different parts of the country and additional time is needed for Havens to assess the applicability of Progeny's test findings to other geographic areas.<sup>11</sup>

Progeny, however, did survey the different types of Part 15 devices that are sold and available for use nationwide and employed a representative sampling of such devices in its tests. Further, Progeny's tests employed a wide range of building construction types, propagation distances and attenuation conditions (foliage, etc.) with the specific intent of replicating varying conditions across the country. Havens therefore has no legitimate basis for attacking the test methodology employed by Progeny. More importantly, now that Havens has made his attacks, no additional time is warranted for Havens to repetitiously reassert his concerns.

Finally, Havens claims that additional time is warranted because "[t]here is clearly no timing need to not grant" Havens extension request.<sup>12</sup> In making this argument, Havens feigns ignorance of the upcoming July 19, 2012 build out deadline for M-LMS licenses. Perhaps Havens has no intention of trying to comply with this deadline or of ever constructing an M-LMS network (which would explain Havens' apparent efforts to make the Section 90.353(d) Part 15 test obligation as difficult as possible for M-LMS licensees to satisfy).

Most important, the Commission has observed in its E911 location accuracy proceeding that "we consider indoor location accuracy to be a significant public safety concern that *requires* development of indoor technical solutions and testing methodologies to verify the effectiveness

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<sup>11</sup> *See id.*

<sup>12</sup> *Id.* at 3.

of such solutions.”<sup>13</sup> Progeny and its affiliate companies are working aggressively to construct an M-LMS network that will provide such critically needed indoor location accuracy capabilities. The need for such capabilities to support public safety is immediate and growing. Therefore, the Commission should not subordinate the needs of public safety simply to entertain Havens’ inappropriate efforts at delay and harassment.

**III. THE COMMISSION SHOULD ALSO REJECT HAVENS’ EXTENSION REQUEST BECAUSE HAVENS HAS MADE NO ATTEMPT TO CLAIM THAT HE IS AN INTERESTED PARTY IN THIS PROCEEDING**

The Commission should also reject Havens’ extension request because Havens has failed to explain why he is an interested party in this proceeding. Instead, Havens asserts in his petition that he must scrutinize and consider what actual Part 15 deployments exist in the United States and he must “attempt to apply the Progeny Test in other locations that have said different ‘existing deployments or systems.’”<sup>14</sup> To accomplish this, Havens also claims he must “secure suitable engineering expertise for review, clear conflicts checks, review the substantial materials and formulate comments.”<sup>15</sup>

Havens, however, never explains why he needs to undertake any of this effort and analysis. Unacknowledged, of course, is Havens’ long standing strategy of harassing and escalating the administrative costs of other Commission licensees through the filing of frivolous pleadings. Havens’ inappropriate tactics were the subject of a Commission order that was

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<sup>13</sup> Amending the Definition of Interconnected VoIP Service in Section 9.3 of the Commission’s Rules, GN Docket No. 11-117, Wireless E911 Location Accuracy Requirements, PS Docket No. 07-114; E911 Requirements for IP-Enabled Service Providers, WC Docket No. 05-196, *Notice of Proposed Rulemaking, Third Report and Order, and Second Further Notice of Proposed Rulemaking*, FCC 11-107, ¶ 86 (July 13, 2011) (*emphasis added*).

<sup>14</sup> *Id.* at 2-3.

<sup>15</sup> *Id.* at 3.

released this morning, the most recent in a long line of such decisions.<sup>16</sup> Granted, there may be limits on the Commission's abilities to control Havens' abusive practices. The Commission, however, is under no obligation to facilitate Havens through the routine grant of his repetitious extension requests. Instead, the public interest would be well served by promptly denying Havens' extension request. Further, the Commission should caution Havens to refrain from unilaterally disregarding the Commission's pleading cycle by withholding any additional comments that he may have in this proceeding until the date designated by the Commission for the filing of reply comments.

#### **IV. CONCLUSION**

For the reasons provided herein, the Commission should deny Havens' request for an extension of time. Further, the Commission should admonish Havens for attempting to misuse the Commission's public notice process to create delay in this proceeding and harass a Commission licensee.

Respectfully submitted,

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<sup>16</sup> See *Havens Sanctions Order*.